

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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EDSON R. ARNEAULT, KATHLEEN DEVLIN AND
JAMES DEVLIN, J. STEVEN EMERSON,
EMERSON PARTNERS, J. STEVEN EMERSON ROTH C.A. No.
IRA, STEVEN ROTHSTEIN, and BARRY STARK
AND IRENE STARK

Plaintiffs,

-against-

DIAMONDHEAD CASINO CORPORATION,

Defendant.

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AMENDED COMPLAINT

Plaintiffs, EDSON R. ARNEAULT , KATHLEEN DEVLIN AND JAMES DEVLIN, J. STEVEN EMERSON, EMERSON PARTNERS, J. STEVEN EMERSON ROTH IRA, STEVEN ROTHSTEIN, and BARRY STARK AND IRENE STARK (collectively, the “Plaintiffs”), by and through their attorney, Ruskin Moscou Faltischek, P.C. (“RMF”) and The Rosner Law Group LLC, as and for their Complaint, state as follows:

NATURE OF THE CASE

1. This is an action to recover monies due and owing to Plaintiffs from Diamondhead Casino Corporation (“DHCC”) under and pursuant to certain Collateralized Convertible Senior Debentures.

JURISDICTION AND VENUE

2. Pursuant to 28 U.S.C. § 1332(a)(1), this Court has diversity jurisdiction over this case insofar as the matter in controversy exceeds the sum or value of \$75,000 and is between

citizens of different states.

3. The parties to this action have all consented to the personal jurisdiction of this Court as provided in the various documents annexed to this Complaint.

4. Venue is proper pursuant to 28 U.S.C. § 1391 because, among other things, the Defendant is incorporated within this judicial district and has agreed to the jurisdiction of the Delaware Courts in the Debentures (as defined below).

PARTIES

5. Edson R. Arneault is a citizen of West Virginia, residing at One Riverside Drive, New Cumberland, W. VA 26047.

6. Kathleen Devlin and James Devlin are citizens of Florida, residing at 7269 Golf Colony Court, Lake Worth, FL 33467.

7. J. Steven Emerson is a citizen of California, residing at 1522 Ensley Ave., Los Angeles, CA 90024.

8. Emerson Partners is a California investment partnership having a place of business located at 1522 Ensley Ave., Los Angeles, CA 90024. Emerson Partners individual partners are citizens of California and Colorado.

9. J. Steven Emerson Roth IRA, is an investment vehicle with an address located at 1522 Ensley Ave., Los Angeles, CA 90024.¹

10. Steven Rothstein is a citizen of New York, residing at 34 Jefferson Landing Circle, Port Jefferson, NY 11778.

11. Barry Stark and Irene Stark are citizens of Florida, residing at 10692 Hawks Vista

¹ At the time of the J. Emerson Roth IRA initial investment, Millennium Trust Company ("Millennium") was designated as the custodian of the Roth IRA. Prior to the commencement of this action and pursuant to that certain Assignment of Interest ("Assignment") dated April 19, 2016 the ("Assignment Date"), Millennium assigned and transferred to J. Steven Emerson all of its right, title and interest in and to the J. Emerson Roth IRA.

Street, Plantation, FL 33324.

12. DHCC is a corporation organized under and pursuant to the laws of the State of Delaware with its principal place of business located at 1013 Princess Street, Alexandria, VA 22314.

FACTUAL BACKGROUND

13. On or about March 31, 2014 and December 31, 2014, DHCC borrowed the amounts of ONE MILLION DOLLARS (\$1,000,000) and EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000) from various individuals and entities including the Plaintiffs, as evidenced by a the First Tranche Collateralized Convertible Senior Debentures (the “First Tranche Debentures”) and the Second Tranche Collateralized Convertible Senior Debentures (the “Second Tranche Debentures” and together with the First Tranche Debentures, the “Debentures”).

14. Copies of the Plaintiffs’ Debentures are annexed hereto as Exhibits “A” through “G” and as summarized in paragraph 15 below.

15. Amounts loaned and Debentures issued with respect to the Plaintiffs’² purchases of the First Tranche Debentures and the Second Tranche Debentures are as follows:

² The aggregate amount of First Tranche Debentures was \$1,000,000 and the aggregate amount of Second Tranche Debentures was \$850,000. There are certain Debenture Holders who, as of its commencement, have not joined in this action.

Debenture Holder	Tranche 1	Tranche 2	Total	Exhibit
Arneault, Edson	\$ 50,000	\$ 50,000	\$ 100,000	A
Kathleen and James Devlin	\$ 80,000	\$ 80,000	\$ 160,000	B
J. Steven Emerson	\$ 110,000	\$ 110,000	\$ 220,000	C
Emerson Partners	\$ 130,000	\$ 130,000	\$ 260,000	D
J. Steven Emerson Roth IRA	\$ 230,000	\$ 230,000	\$ 460,000	E
Steven Rothstein	\$ 50,000	\$ 50,000	\$ 100,000	F
Barry and Irene Stark	\$ 50,000	\$ 50,000	\$ 100,000	G
Totals	\$700,000	\$700,000	\$ 1,400,000.00	

16. Each of the Debentures provides that it shall bear interest at a fixed rate of 4% per annum and payable annually on March 1 of each year.

17. On or about April 20, 2015, the first installment of interest was paid to the Plaintiffs, albeit late, covering interest through December 31, 2014.

18. The interest installment due to be paid on March 1, 2016 was not paid and remains unpaid as of the commencement of this action.

19. Pursuant to a letter dated August 17, 2016 (the "Demand Letter"), DHCC was declared in default of its obligations under the Debentures and the outstanding principal plus all accrued and unpaid interest was demanded.

20. No response to the Demand Letter has been received nor has there been any payment or any other contact from DHCC.

AS AND FOR A CAUSE OF ACTION
(Breach of Debenture Agreement)

21. Plaintiffs repeat, reiterate and restate each and every allegation set forth in paragraphs numbered 1 through 20 above as if fully set forth at length hereat.

22. The Debentures constitute valid and binding contracts.

23. The Plaintiffs have performed their obligations under the Debentures.

24. DHCC has materially breached the Debentures by failing to make payment when

due.

25. As a direct result of DHCC's breach of the Debentures, Plaintiffs have been damaged in excess of \$1,400,000, plus interest, fees, and costs.

26. DHCC is indebted to the Plaintiffs in the amount of \$1,400,000 as set forth in paragraph 15 hereinabove, plus interest from January 1, 2015 and fees and costs.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against DHCC:

- (a) In favor of the Plaintiffs in the amount of \$1,400,000, plus interest from January 1, 2015 and costs and fees; together with such other, further and different relief as this Court may deem just and proper.

Dated: February , 2017
Wilmington, DE

Respectfully submitted,

THE ROSNER LAW GROUP LLC

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